IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 398 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

VASBEN CHATURBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioners

Mr. S.T.Mehta, PUBLIC PROSECUTOR for Respondent No. 1

MR DM THAKKAR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/01/97

ORAL JUDGEMENT

This petition has been preferred by the wife who has been denied maintenance under section 125 of the Criminal Procedure Code by her husband-respondent no. 2.

2. Thne petitioner was married to the respondent no. 2 in the year 1967. During the said

marriage, two daughters, Kalpana and Shivani were born to her. She filed Criminal Miscellaneous Application no. 71 of 1987 before the learned Judicial Magistrate, First Class, Vadodara under section 125 of the Criminal Procedure Code claiming monthly maintenance of Rs. 300/- for herself and Rs. 100/- for each of her daughters. The learned Judicial Magistrate, under his judgment and order dated 4.1.1992 rejected the claim for maintenance of Kalpana since she had attained the age of majority. The learned Magistrate however awarded monthly maintenance of Rs. 250/- to the wife and Rs. 150/- to the minor daughter Shivani.

3. Feeling aggrieved the respondent no. 2 preferred Criminal Revision Application no. 48 of 1992 before the learned Additional Sessions Judge, Vadodara. The learned Additional Sessions Judge, Vadodara under his judgment and order dated 12.8.92 quashed and set aside the order of maintenance made in favour of the petitioner no. 1 wife, while he maintained the order of maintenance made in favour of the petitioner no. 2 minor daughter. Feeling aggrieved, the petitioners wife and minor daughter have preferred this petition.

4. It is contended that the petitioner no.1 was ill-treated and driven out of her matrimonial house and that she was rightly awarded monthly maintenance jof Rs. 250/- by the learned Magistrate. But for the desertion by the respondent no. 2, the petitioner would not have been compelled to stay in an Ashram alongwith her minor daughter. Since the petitioner no.1 was unable to maintain herself, she ought to be awarded maintenance as was done by the learned Magistrate.

5. The learned Additional Sessions Judge has considered the evidence produced on the record of the matter. Considering the admission of the petitioner no.1 that she was maintained well by her husband, as and when she went to reside with him and in view of the decree for restitution of conjugal rights with him, asked in Hindu Marriage Petition no. 53 of 1968, and in view of the money sent to the petitioner no. 1 by the respondent no. 2 by Money orders, has come to the conclusion that neither the petitioner no.1 was ill-treated by the respondent no. 2 nor was she compelled to leave her matrimonial home nor was she driven out of her matrimonial home by the respondent no. 2. Thus, the learned Additional Sessions Judge has not believed the factum of desertion by the respondent no. 2 or negligence on the part of the respondent no. 2 to maintain his wife and the minor child. In view of the

above facts recorded by the learned Additional Sessions Judge, it cannot be said that the learned Additional Sessions Judge has erred in refusing the maintenance to the petitioner no. 1. For awarding maintenance under section 125 of the Code, it is essential that the husband having sufficient means should neglect or refuse to maintain his wife and that the wife shall have sufficient reason to refuse to live with her husband. In the present case, both the aforesaid factors have been found in favour of the respondent no. 2. There is nothing on the record to refute the findings recorded by the learned Additional Sessions Judge. In the circumstances, this Court would not be justified in interfering with the order made by the learned Additional Sessions Judge.

6. In view of the above discussion, the petition is dismissed. Rule is discharged.

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